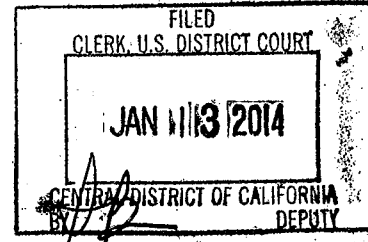


1 Christopher J. Hamner, Esq. (SBN 197117)  
 2 Amy T. Wootton, Esq. (SBN 188856)  
 3 HAMNER LAW OFFICES, APC  
 4 555 W. 5<sup>th</sup> Street, 31<sup>st</sup> Floor  
 5 Los Angeles, California, 90013  
 6 Telephone: (213) 533-4160  
 7 Facsimile: (213) 533-4167  
 8 chamner@hamnerlaw.com  
 9 awootton@hamnerlaw.com  
 10 *(Additional counsel on next page)*



11 Attorneys for Plaintiff BRANDON KRAMER, on behalf of himself and all others  
 12 similarly situated

13 *(Additional counsel on next page)*

NOTE CHANGES MADE BY THE COURT.

14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 BRANDON KRAMER, on behalf of  
 17 himself and all others similarly situated,  
 18 and the general public,

19 Plaintiff,

20 v.

21 WILSON SPORTING GOODS CO., a  
 22 Delaware Corporation and DOES 1  
 23 through 10, inclusive,

24 Defendants.

Case No. CV-13-06330 JFW (SHx)

Discovery Matter

**JOINT STIPULATED  
PROTECTIVE ORDER**

25 District Judge: Hon. John F. Walker  
 26 Magistrate: Hon. Stephen J. Hillman  
 27 Action Filed: Aug. 29, 2013  
 28 Discovery Cut Off: June 9, 2014  
 Motion Cut Off: June 23, 2014  
 Pre-Trial Con.: July 11, 2014  
 Trial Date: July 29, 2014

1 *(Additional Plaintiff's Counsel)*

2 Christopher A. Olsen, Esq. (SBN 236928)

3 OLSEN LAW OFFICES, APC

4 1010 Second Ave., Ste. 1835

5 San Diego, CA 92101

6 Telephone: (619) 550-9352

7 Facsimile: (619) 923-2747

8 Email: caolsen@caolsenlawoffices.com

9 *(Defendant's Counsel)*

10 Eric R. McDonough, Esq. (SBN 193956)

11 SEYFARTH SHAW, LLP

12 2029 Century Park East, Ste. 3500

13 Los Angeles, CA 90067

14 Telephone: (310) 277-7200

15 Facsimile: (310) 201-5119

16 emcdonough@seyfarth.com

17 *Appearing Pro Hoc Vice*

18 Jeffery A. Key (IL. SBN

19 Key and Associates

20 321 North Clark Street, Ste. 500

21 Chicago, IL 60654

22 Telephone: (312) 560-2148

23 Facsimile: (312) 957-1236

24 jakey@key-and-associates.com

25 *(Defendant's Counsel)*

26 *Appearing Pro Hac Vice*

27 Michael R. Levinson (pro hac vice)

28 Seyfarth Shaw LLP

131 South Dearborn Street, Suite 2400

Chicago, IL 60603

Telephone: (312) 460-5868

Facsimile: (312) 460-7000

Email: mlevinson@seyfarth.com

1 WHEREAS it is anticipated that among the documents which may be  
2 produced in connection with the potential litigation of this matter will be information  
3 that is protected from disclosure by the privacy rights that attach to trade secrets,  
4 and/or information otherwise properly regarded by one or more of the parties as  
5 private, sensitive, proprietary, financial, and/or confidential;

6 IT IS THEREFORE STIPULATED, AGREED, AND JOINTLY  
7 REQUESTED by Plaintiff Brandon Kramer ("Plaintiff") and Defendant Wilson  
8 Sporting Goods Company ("Defendant") (collectively, the "Parties"), by and through  
9 their respective counsel, that a protective order should be entered according to the  
10 following terms and provisions:

11 **DEFINITIONS**

12 1. "Matter" or "this litigation" means Kramer, et al. v. Wilson Sporting  
13 Goods Co., currently pending in the United States District Court, Central District of  
14 California, Case No. 13 CV 06630 JFW (SHx).

15 2. "Confidential Information" means non-public information (i) which is  
16 produced to a party to the Matter ("the Receiving Party") pursuant to any discovery  
17 method allowed under statute, rule, or case law; and (ii) which is designated as  
18 Confidential pursuant to Paragraph 4 below. "Highly Confidential Information"  
19 means highly sensitive or private non-public information (i) which is produced to a  
20 Receiving Party pursuant to any discovery method allowed under statute, rule or case  
21 law; and (ii) which is designated as "Highly Confidential" or "Attorney's Eyes  
22 Only" pursuant to paragraph 4 below. The party producing information pursuant to  
23 discovery in the Matter is the Producing Party.

24 3. "Qualified Person" means a person who agrees to be bound by this  
25 Protective Order and who falls into one of the following categories:

26 a. Attorney of record for a party in the Matter or member, associate,  
27 paralegal or employee of the firm where such attorney practices, or an employee of  
28

1 an independent photocopying, or microfilming service or third-party vendor utilized  
2 by such attorney in the Matter;

3 b. In-house counsel or designated legal personnel for a party;

4 c. Any other personnel working in the employment of a party or  
5 their attorneys of record in the Matter, to the extent disclosure of Confidential  
6 Information or Highly Confidential Information is reasonably necessary in  
7 connection with the litigation or settlement of this Matter;

8 d. Up to three (3) designees from any non-party, including insurers,  
9 that may have defense and/or indemnity obligations for claims against a party, who  
10 shall have signed an undertaking in the form attached as Exhibit 1 before reviewing  
11 any documents pursuant to this order;

12 e. Any deposition or trial witness who is indicated on the face of the  
13 document as having written or received such document during the course of his or  
14 her employment or consultancy for the party producing the document, so long as  
15 such person is an employee or consultant when he or she testifies at deposition or  
16 trial;

17 f. Independent testifying or non-testifying experts or trial  
18 consultants (*i.e.*, persons with expertise who are not currently employed or  
19 performing non-litigation consulting with any competitors of a party, and who have  
20 no intention or expectation of being employed or performing non-litigation  
21 consulting with any competitors of a party) retained by such counsel or by a party  
22 solely as a an independent expert in connection with this proceeding, provided,  
23 however, that no information, documents, or things designated as Confidential or  
24 Highly Confidential shall be disclosed to any testifying or non-testifying experts  
25 unless and until such persons have first been supplied with and have read a copy of  
26 this Order and have executed an Undertaking in the form annexed hereto. Executed  
27 undertakings will be held by counsel for the party which retains the expert;  
28

1 g. Stenograph reporter involved in any deposition, hearing, trial or  
2 other proceeding in this Matter;

3 h. Officers of this Court and their supporting personnel or officers  
4 of any appellate court to which any appeal may be taken or in which review is  
5 sought, pursuant to Paragraph 14 below; or

6 i. Any mediator or settlement officer agreed upon by the Parties.

7 **AGREEMENT**

8 4. A Producing Party may designate as "Confidential" those materials,  
9 whether in written, oral, electronic, graphic, audiovisual or any other form, which  
10 that party in good faith believes contain Confidential Information that is used by it  
11 in, or pertaining to, its business, which information is not generally known and  
12 which that party would normally not reveal to third parties or, if disclosed, would  
13 require such third parties to maintain in confidence. A Producing Party may  
14 designate as "Highly Confidential" or "Attorney's Eyes Only" those materials in  
15 written, oral, electronic, graphic, audiovisual or any other form, which that party in  
16 good faith believes contain Highly Confidential Information that is used by it in, or  
17 pertaining to, its business, which information is highly sensitive or private.

18 5. A Producing Party may designate materials produced or exchanged  
19 during discovery as "Confidential" or "Highly Confidential" by legibly marking the  
20 legends "Confidential" or "Highly Confidential" on each page of such materials.  
21 Any Producing Party or any other party may so designate any materials in the  
22 reasonable exercise of such party's discretion; provided, however, by agreeing to this  
23 Protective Order, no party waives the right to challenge any other party's designation  
24 of any document as "Confidential" or "Highly Confidential."

25 6. A Receiving Party who contests any other party's designation of any  
26 document as "Confidential" shall attempt to resolve the dispute with the Producing  
27 Party, and if an agreement cannot be reached, may challenge the designation with the  
28 Judge presiding over this Matter as provided herein.

1           7. All discovery produced in this Matter, including all Confidential  
2 Information and Highly Confidential Information, shall be used by a Party who  
3 receives the information (the "Receiving Party") solely for the purposes of  
4 discovery, pleadings, motions, briefs, potential settlement, and preparation for the  
5 trial or hearing in this Matter and on appeal, if any, and for no other purpose.

6           8. Confidential Information may be disclosed only to a Qualified Person,  
7 unless otherwise expressly provided in this Protective Order, or otherwise agreed to  
8 in writing between the Producing Party and the Receiving Party of the Confidential  
9 Information or Highly Confidential Information. Highly Confidential Information  
10 may be disclosed only to those Qualified Persons identified in paragraphs 3(a), 3(b),  
11 3(c), 3(e) and 3(f), unless otherwise agreed to in writing between the Producing Party  
12 and the Receiving Party.

13           9. No Confidential Information or Highly Confidential Information shall  
14 be provided or disclosed to any person ("recipient"), including a Qualified Person, at  
15 any time or in any form or manner unless, in the good faith judgment of the  
16 disclosing person, the recipient has a present need to hear, know, or review such  
17 information for the purpose of assisting a party in the Matter.

18           10. No disclosure of Confidential Information or Highly Confidential  
19 Information to a person other than as set forth in paragraph 8 may be made, except  
20 upon the prior express written consent of the Producing Party.

21           11. Without written permission from the Producing Party or a court order  
22 secured after appropriate notice to all interested persons, a Receiving Party may not  
23 file in the public record in this action any Confidential Information or Highly  
24 Confidential Information. All transcripts, depositions, exhibits, and other documents  
25 and things filed or received with the Court containing Confidential Information or  
26 Highly Confidential Information, or any pleading purporting to reproduce or  
27 paraphrase such information, shall be filed in compliance with Civil Local Rule 79-5  
AR and General Order 62, in sealed envelopes or other appropriate sealed containers on

1 which shall be endorsed the caption of the Matter, with a description of the contents  
2 of such sealed envelope or container, and the legends "Confidential" or "Attorney's  
3 Eyes Only." Any party submitting any Confidential Information or Highly  
4 Confidential Information to the Court shall request that the Court maintain such  
5 Confidential Information or Highly Confidential Information under seal; provided,  
6 however, that the Producing Party shall bear the burden of defending such  
7 designation if challenged. If a Receiving Party's request to file Confidential  
8 Information or Highly Confidential Information under seal is denied by the Court,  
9 then the Receiving Party may file the information in the public record pursuant to  
10 Civil Local Rule 79-5, unless otherwise instructed by the Court.

11 12. Any person making, or causing to be made, copies of any Confidential  
12 or Highly Confidential Information shall make certain that each copy bears the  
13 legends "Confidential" or "Highly Confidential" on each page.

14 13. Each party shall, at the election of the Receiving Party, either destroy or  
15 return all Confidential Information or Highly Confidential Information, including  
16 any copies thereof, to the Producing Party, and shall confirm in writing that all the  
17 Confidential Information or Highly Confidential Information, including copies  
18 thereof in the Receiving Party's possession, custody or control, has been returned or  
19 destroyed within thirty (30) days after the first of any of the following: the case being  
20 resolved by final judgment, appeal, settlement, some combination thereof, or  
21 otherwise.

22 14. No Receiving Party, no Qualified Person, nor any other entity, other  
23 than the Producing Party, shall retain copies of the Confidential Information or  
24 Highly Confidential Information, including any copies thereof, or referenced thereto,  
25 after the time specified in Paragraph 13 herein. Any exceptions to this Paragraph  
26 shall be in writing by a duly authorized representative of the Designating Party.  
27 Notwithstanding the terms of Paragraphs 10 and 11 hereof, the Parties to this Matter  
28

1 may retain, and not return, one complete copy of the pleadings as actually filed with  
2 the Court.

3 15. The inadvertent or unintentional disclosure by the Producing Party of  
4 Confidential Information or Highly Confidential Information, regardless of whether  
5 the information was so designated at the time of disclosure, shall not be a waiver in  
6 whole or in part of the Producing Party's claim of confidentiality, either as to the  
7 specific information disclosed or as to any other information relating thereto on the  
8 same or related subject matter. Any such inadvertently or unintentionally disclosed  
9 Confidential Information or Highly Confidential Information not designated as such  
10 pursuant to Paragraph 4 shall be so designated by giving written notice to all parties,  
11 as soon as reasonably possible after the Producing Party becomes aware of the  
12 inadvertent or unintentional disclosure. Upon such notice, the Receiving Party shall  
13 return said documents and things and not retain copies thereof, and shall thereafter  
14 treat information contained in said documents and any summaries and notes thereof  
15 as Confidential Information.

16 16. The inadvertent or unintentional production of any attorney-client, work  
17 product, or other privileged information shall not be a waiver, in whole or in part, of  
18 such privilege. A party or its counsel who receives production of any privileged  
19 documents or privileged information shall promptly notify counsel for the party  
20 producing such documents or information.

21 17. A Receiving Party may challenge a designation of confidentiality at any  
22 time. Unless a prompt challenge to a Producing Party's confidentiality designation is  
23 necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
24 burdens, or a significant disruption or delay of the litigation, a party does not waive  
25 its right to challenge a confidentiality designation by electing not to mount a  
26 challenge promptly after the original designation is disclosed. The party challenging  
27 such designation may initiate the dispute resolution process by providing written  
28 notice of each designation it is challenging and describing the basis for each

1 challenge. To avoid ambiguity as to whether a challenge has been made, the written  
2 notice must recite that the challenge to confidentiality is being made in accordance  
3 with this specific paragraph of the Protective Order.

4 The Parties shall attempt to resolve each challenge in good faith and must  
5 begin the process by conferring directly (in voice-to-voice dialogue; other forms of  
6 communication are not sufficient) within 14 days of the date of service of notice. In  
7 conferring, the party challenging such designation must explain the basis for its  
8 belief that the confidentiality designation was not proper and must give the  
9 Producing Party an opportunity to review the designated material, to reconsider the  
10 circumstances, and, if no change in designation is offered, to explain the basis for the  
11 chosen designation. A party challenging such designation may proceed to the next  
12 stage of the challenge process only if it has engaged in this meet-and-confer process  
13 first or if it establishes that the Producing Party is unwilling to participate in the  
14 meet-and-confer process in a timely manner.

15 If the Parties cannot resolve a challenge without court intervention, the  
16 Receiving Party may file and serve a motion under Civil Local Rule 7 (and in  
17 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 7  
18 days of the parties agreeing that the meet-and-confer process will not resolve their  
19 dispute. Each such motion must be accompanied by a competent declaration  
20 affirming that the movant has complied with the meet-and-confer requirements  
21 imposed in the preceding paragraph.

22 Frivolous challenges, and those made for an improper purpose (e.g., to harass  
23 or impose unnecessary expenses and burdens on other parties) may expose the  
24 Challenging Party to sanctions. Unless the Producing Party has waived the  
25 confidentiality designation by failing to file a motion to retain confidentiality as  
26 described above, all parties shall continue to afford the material in question the level  
27 of protection to which it is entitled under the Producing Party's designation until the  
28 court rules on the challenge.

1           18. If a party is served with a request, subpoena or a court order issued in  
2 other litigation that compels disclosure of any Confidential Information or Highly  
3 Confidential Information, that party must:

4           (a) promptly notify in writing the Producing Party. Such notification shall  
5 include a copy of the request, subpoena or court order;

6           (b) promptly notify in writing the party who caused the request, subpoena or  
7 order to issue in the other litigation that some or all of the material covered by the  
8 subpoena or order is subject to this Protective Order. Such notification shall include  
9 a copy of this Stipulated Protective Order; and

10           (c) cooperate with respect to all reasonable procedures sought to be pursued  
11 by the Producing Party whose Confidential Information or Highly Confidential  
12 Information may be affected.

13           If the Producing Party timely seeks a protective order or otherwise arranges  
14 for protection with the party who caused the requesting subpoena or order to issue,  
15 the party served with the request, subpoena or order shall not produce any  
16 Confidential Information or Highly Confidential Information before a determination  
17 by the court from which the request, subpoena or order issued, unless the party has  
18 obtained the Producing Party's permission. The Producing Party shall bear the  
19 burden and expense of seeking protection in that court of its Confidential  
20 Information or Highly Confidential Information.

21           19. The terms of this Order are applicable to information produced by a  
22 non-party in this action and designated as "Confidential or "Highly Confidential."  
23 Confidential Information or Highly Confidential Information produced by a non-  
24 party in connection with this litigation is protected by the remedies and relief  
25 provided by this Order. Nothing in these provisions should be construed as  
26 prohibiting a party or non-party from seeking additional protections. In the event  
27 that a party is required, by a valid discovery request, to produce a non-party's  
28 confidential information or highly confidential information in its possession, and the

1 party is subject to an agreement with the non-party not to produce the non-party's  
2 Confidential Information or Highly Confidential Information, then the Producing  
3 Party shall:

4 (1) promptly notify in writing the Requesting Party and the non-party that  
5 some or all of the information requested is subject to a confidentiality agreement  
6 with a non-party;

7 (2) promptly provide the non-party with a copy of the Stipulated Protective  
8 Order in this litigation, the relevant discovery request(s), and a reasonably specific  
9 description of the information requested; and

10 (3) make the information requested available for inspection by the non-  
11 party.

12 If the non-party or the party in this matter receiving the request fails to object  
13 or seek a protective order within 14 days of receiving the notice and accompanying  
14 information, the Producing Party may produce the non-party's confidential  
15 information responsive to the discovery request. If the non-party or the party in this  
16 matter receiving the request timely seeks a protective order, the Producing Party  
17 shall not produce any information in its possession or control that is subject to the  
18 confidentiality agreement with the non-party before a determination by the court.<sup>1</sup>  
19 Absent a court order to the contrary, the non-party shall bear the burden and expense  
20 of seeking protection in this court of its Confidential Information or Highly  
21 Confidential Information.

22 20. If a Receiving Party learns that, by inadvertence or otherwise, it has  
23 disclosed Confidential Information or Highly Confidential Information to any person  
24 not authorized under this Stipulated Protective Order, the Receiving Party must  
25 immediately (a) notify in writing the Producing Party of the unauthorized disclosure  
26 of Highly Confidential Information, (b) use its best efforts to retrieve all

27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a non-party and to afford the non-party an opportunity to protect its confidentiality  
interests in this court.

1 unauthorized copies of the Confidential Information or Highly Confidential  
2 Information, (c) inform the person or persons to whom unauthorized disclosures  
3 were made of all the terms of this Order, and (d) request such person or persons to  
4 execute the attached Exhibit 1.

5 21. The parties agree that they shall be bound by this Stipulation upon  
6 signing by counsel and shall protect any and all Confidential Information or Highly  
7 Confidential Information as provided herein even if this Stipulation is not approved  
8 by the Court. In the event that the Court denies approval of this Stipulation as  
9 submitted, any party receiving Confidential Information or Highly Confidential

10 Information shall within thirty (30) days, at the election of the Receiving Party,  
11 either destroy or return all Confidential Information and Highly Confidential  
12 Information to the Producing Party as provided in Paragraph 16 herein and shall  
13 confirm in writing that the materials that have been returned or destroyed constitute  
14 all the Confidential Information and Highly Confidential Information, including  
15 copies thereof, in that party's possession, custody or control.

16 22. A copy of the Scheduling and Case Management Order, issued on  
17 November 22, 2013 which governs this case, is attached hereto as Exhibit 2.

18  
19 IT IS SO STIPULATED.

20 Dated: January 10, 2014

21 By: /s/

22 Christopher J. Hamner, Esq.  
23 Amy T. Wootton, Esq.

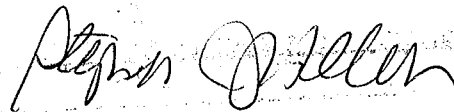
1 Dated: January 10, 2014

2 By: /s/

3 Eric R. McDonough, Esq.

4  
5  
6  
7  
8 \* Electronically signed by submitting attorney with the concurrence of  
9 Eric R. McDonough, Esq.

10  
11 So ordered.

12  
13 

14  
15 STEPHEN J. HILLMAN  
16 UNITED STATES MAGISTRATE JUDGE  
17 1/13/14

**EXHIBIT 1****UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BRANDON KRAMER, on behalf of  
himself and all others similarly situated,  
and the general public,

Plaintiff,

v.

WILSON SPORTING GOODS CO., a  
Delaware Corporation and DOES 1  
through 10, inclusive,

Defendants.

Case No. CV-13-06330 JFW (SHx)

*WU / JFW*  
District Judge: Hon. John F. Walker  
Magistrate: Hon. Stephen J. Hillman  
Action Filed: Aug. 29, 2013  
Pre-Trial Con.: July 11, 2014  
Trial Date: July 29, 2014

**UNDERTAKING TO ABIDE BY PROTECTIVE ORDER**

I, \_\_\_\_\_ declare that my address  
is \_\_\_\_\_.

My current employer is \_\_\_\_\_ and my occupation is  
\_\_\_\_\_.

1. I have received a copy of the Stipulated Protective Order in the above-captioned action. I have carefully read and understand the provisions of the Stipulated Protective Order.

2. I to date have complied, and will comply from this date forward, with all of the provisions of the Stipulated Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Stipulated Protective Order, and will use only for purposes of this action any CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL INFORMATION that is disclosed to me.

3. Promptly upon termination of this action, I will return any CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL

1 INFORMATION in my possession to the outside attorneys representing my  
2 employer or the attorneys who furnished those documents to me.

3 4. I hereby submit to the jurisdiction of this Court for the purpose of  
4 enforcement of the Stipulated Protective Order in this action.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Dated: \_\_\_\_\_

7  
8 X: \_\_\_\_\_  
9

## **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Brandon Kramer, et al.,	)	Case No. CV 13-6330-JFW (SHx)
	)	
Plaintiff,	)	<b>SCHEDULING AND CASE MANAGEMENT</b>
	)	<b>ORDER</b>
v.	)	
	)	
Wilson Sporting Goods Co., et	)	
al.,	)	
	)	
Defendants.	)	

The purpose of this Order is to notify the parties and their counsel of the deadlines and the schedule that will govern this action. SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES. Ordinarily, the dates set forth on the last page are determined after reviewing the parties' Joint Report or consultation with the parties at the Fed.R.Civ.P. 16(b) Scheduling Conference. Accordingly, the dates and requirements are firm. The Court is very unlikely to grant continuances, even if stipulated to by the parties, unless the parties establish good cause through a concrete showing. Because this Order in some respects modifies the applicable Local Rules, counsel are advised to read it carefully to

1 avoid default on the obligations established herein. Counsel  
2 are advised to pay particular attention to the requirements  
3 of the Court with respect to electronic filing, the filing of  
4 motions for summary judgment, and the documents to be  
5 submitted at the Pre-Trial Conference and Trial.

6 **1. ELECTRONIC FILING AND COURTESY COPIES**

7 All documents that are required to be filed in an  
8 electronic format pursuant to the General Order Authorizing  
9 Electronic Filing shall be filed electronically no later than  
10 4:00 p.m. on the date due unless otherwise ordered by the  
11 Court. Any documents filed electronically after 4:00 p.m. on  
12 the date due will be considered late and may be stricken by  
13 the Court. Any documents that counsel attempt to file  
14 electronically which are improperly filed will not be  
15 accepted by the Court.

16 Counsel are ORDERED to deliver **2 copies** of all documents  
17 filed electronically to Chambers. For each document filed  
18 electronically, one copy shall be marked "CHAMBERS COPY" and  
19 the other copy shall be marked "COURTESY COPY." The  
20 "CHAMBERS COPY" and "COURTESY COPY" are collectively referred  
21 to herein as "Courtesy Copies." The Courtesy Copies of each  
22 electronically filed document must include on each page the  
23 running header created by the ECF system. In addition, on  
24 the first page of each Courtesy Copy, in the space between  
25 lines 1 - 7 to the right of the center, counsel shall include  
26 the date the document was e-filed and the document number.  
27 The Courtesy Copies shall be delivered to Chambers no later  
28 than 10:00 a.m. on the next business day after the document

1 was electronically filed. All documents must be stapled or  
2 bound by a two prong fastener, the electronic proof of  
3 service must be attached as the last page of each document,  
4 and the exhibits attached to any document must be tabbed.  
5 Counsel shall not staple the "COURTESY COPY" and "CHAMBERS  
6 COPY" together. The "COURTESY COPY" of all documents must be  
7 three-hole punched at the left margin with the oversized  
8 13/32" hole size, not the standard 9/32" hole size.

9 For any document that is not required to be filed  
10 electronically, counsel are ORDERED to deliver 1 conformed  
11 copy of the document, which shall be marked "COURTESY COPY,"  
12 to Chambers **at the time of filing.**

13 When a proposed order accompanies an electronic filing, a  
14 WordPerfect or Word copy of the proposed order, along with a  
15 copy of the PDF electronically filed main document, shall be  
16 e-mailed to JFW\_Chambers@cacd.uscourts.gov. The subject line  
17 of the e-mail shall be in the following format: court's  
18 divisional office, year, case type, case number, document  
19 control number assigned to the main document at the time of  
20 filing, judge's initials and filer's (party) name. Failure  
21 to comply with this requirement may result in the denial or  
22 striking of the request or the Court may withhold ruling on  
23 the request until the Court receives the required documents.

## 24 **2. DISCOVERY**

25 All discovery shall be completed by the discovery cut-off  
26 date specified on the last page of this Order. **THIS IS NOT**  
27 **THE DATE BY WHICH DISCOVERY REQUESTS MUST BE SERVED; IT IS**  
28 **THE DATE BY WHICH ALL DISCOVERY, INCLUDING EXPERT DISCOVERY,**

1 **SHALL BE COMPLETED.** The Court does not enforce side  
2 agreements to conduct discovery beyond the discovery cut-off  
3 date.

4 Any motion challenging the adequacy of responses to  
5 discovery must be heard sufficiently in advance of the  
6 discovery cut-off date to permit the responses to be obtained  
7 before that date if the motion is granted.

8 In an effort to provide further guidance to the parties,  
9 the Court notes the following:

10 **(a) Depositions**

11 All depositions shall be scheduled to commence  
12 sufficiently in advance of the discovery cut-off date to  
13 permit their completion and to permit the deposing party  
14 enough time to bring any discovery motions concerning the  
15 deposition prior to the cut-off date.

16 **(b) Written Discovery**

17 All interrogatories, requests for production of  
18 documents, and requests for admissions shall be served  
19 sufficiently in advance of the discovery cut-off date to  
20 permit the discovering party enough time to challenge (via  
21 motion practice) responses deemed to be deficient.

22 **(c) Discovery Motions**

23 Whenever possible, the Court expects the parties to  
24 resolve discovery issues among themselves in a courteous,  
25 reasonable, and professional manner. If they do so, resort  
26 to the Court for guidance in discovery is seldom necessary.  
27 The Magistrate Judge assigned to this case will rule on  
28 discovery motions and protective orders.

1           **(d) Expert Discovery**

2           If expert witnesses are to be called at trial, the  
3 parties shall designate affirmative experts to be called at  
4 trial and shall provide reports required by Fed.R.Civ.P.  
5 26(a)(2)(B) not later than eight weeks prior to the discovery  
6 cut-off date. Rebuttal expert witnesses shall be designated  
7 and reports provided as required by Fed.R.Civ.P. 26(a)(2)(B)  
8 not later than five weeks prior to the discovery cut-off  
9 date. Any non-retained expert designated by a party as an  
10 affirmative or rebuttal expert shall also prepare and provide  
11 an expert report in the form described by Fed.R.Civ.P.  
12 26(a)(2)(B). Expert witnesses will be bound by the opinions  
13 expressed in their reports prepared in accordance with  
14 Fed.R.Civ.P. 26(a)(2)(B) and will not be permitted to offer  
15 new opinions at trial. Failure to timely comply with this  
16 deadline will result in the expert being excluded at trial as  
17 a witness.

18           **3. MOTIONS - GENERAL PROVISIONS**

19           All law and motion matters, except for motions in limine,  
20 must be set for hearing (not filed) by the motion cut-off  
21 date specified on the last page of this Order. The Court  
22 will deny or strike late-filed motions. The title page of  
23 all motions must state the hearing date and time for the  
24 motion, the Pre-Trial Conference date, and the Trial date.

25           Once a party has noticed a motion for hearing on a  
26 particular date, the hearing shall not be continued without  
27 leave of Court. If the Court concludes that a motion can be  
28

1 resolved without argument, the Court will notify the parties  
2 in advance.

3 If counsel does not intend to oppose a motion, counsel  
4 shall immediately inform the Courtroom Deputy by e-mail and  
5 immediately file a Notice of Non-Opposition in accordance  
6 with the Local Rules. The parties should note that failure  
7 to timely respond to any motion shall be deemed by the Court  
8 as consent to the granting of the motion. See Local Rules.

9 Ex parte practice is strongly discouraged. The  
10 Court will require strict adherence to proper ex parte  
11 procedures for any ex parte application filed with the Court.  
12 See Local Rules and the Court's Standing Order.

13 **(a) Applications and Stipulations to Extend Time**

14 No applications or stipulations extending the time to  
15 file any required document or to continue any date are  
16 effective unless and until the Court approves them.  
17 Applications and/or stipulations to extend the time to file  
18 any required document or to continue any hearing, Pre-Trial  
19 date, or the Trial date must set forth the following:

20 (i) the existing due date or hearing date, as well  
21 as all dates currently set by the Court in this Order,  
22 including the discovery cut-off date, the Pre-Trial  
23 Conference date, and the Trial date;

24 (ii) the new dates proposed by the parties;

25 (iii) specific, concrete reasons supporting good  
26 cause for granting the extension; and

27 / / /

28 / / /

1 (iv) whether there have been prior requests for  
2 extensions by any party, and whether those requests were  
3 granted or denied by the Court.

4 All applications and stipulations must be accompanied by  
5 a separate and independent proposed order which must be  
6 submitted to the Court in accordance with the General Order  
7 Authorizing Electronic Filing and this Order. Failure to  
8 submit a separate proposed order may result in the denial of  
9 the application or stipulation or the Court may withhold  
10 ruling on the application or stipulation until the Court  
11 receives a separate proposed order.

12 **(b) Joinder of Parties and Amendment of Pleadings**

13 The deadline for joining parties and amending pleadings  
14 is sixty days from the date of this Order. Any motions to  
15 join other parties or for leave to amend the pleadings shall  
16 be filed within twenty days of the date of this Order so that  
17 they can be heard and decided prior to the deadline.

18 In addition to the requirements of the Local Rules, all  
19 motions to amend the pleadings shall: (1) state the effect of  
20 the amendment; (2) be serially numbered to differentiate the  
21 amendment from previous amendments; and (3) state the page,  
22 line number(s), and wording of any proposed change or  
23 addition of material. The parties shall deliver to Chambers  
24 a redlined version of the proposed amended pleading  
25 indicating all additions and/or deletions of material.

26 **(c) Withdrawal or Substitution of Counsel**

27 The Court will not grant a request for approval of  
28 substitution of counsel after an action has been set for

1 trial unless: (1) counsel files the request using the most  
2 recent version of the appropriate forms provided on the  
3 Court's website; and (2) the request is accompanied by a  
4 declaration signed by a substituting attorney indicating that  
5 such attorney has been advised of the trial date and will be  
6 prepared to proceed with trial as scheduled. Any request for  
7 substitution of counsel which is not on the proper form or is  
8 not accompanied by a declaration signed by a substituting  
9 attorney as set forth above will be denied.

10 Counsel who wish to withdraw and substitute their client  
11 *pro se* must file a regularly noticed motion to withdraw which  
12 demonstrates good cause for the request to withdraw. The  
13 Court will not consider such a motion unless: (1) the motion  
14 is accompanied by a declaration signed by the client  
15 indicating that the client consents to the withdrawal, has  
16 been advised of the time and date of trial, and will be  
17 prepared to represent themselves *pro se* on the scheduled  
18 trial date; or (2) the Court is otherwise satisfied for good  
19 cause shown that the attorney should be permitted to  
20 withdraw.

21 **4. SUMMARY JUDGMENT MOTIONS**

22 The Court will only entertain ONE summary judgment motion  
23 by a party. In the event a party believes that more than one  
24 summary judgment motion is necessary to expedite the  
25 resolution of issues in the action, the party must obtain  
26 leave of court to file more than one summary judgment motion.  
27 The Court will require strict adherence to the following  
28 requirements:

1           **(a) Statement Of Uncontroverted Facts and Conclusions of**  
2           **Law and Statement of Genuine Disputes of Material**  
3           **Fact**

4           The Statement of Uncontroverted Facts and Conclusions of  
5 Law is to be prepared in a two column format. The left hand  
6 column should set forth the allegedly undisputed fact or  
7 conclusion or law. The right hand column should set forth  
8 the evidence that supports the factual statement or  
9 conclusion of law. The factual statements and conclusions of  
10 law should be set forth in sequentially numbered paragraphs.  
11 Each paragraph should contain a narrowly focused statement of  
12 fact or conclusion of law. Each numbered paragraph should  
13 address a single subject in as concise a manner as possible.

14           The opposing party's Statement of Genuine Disputes of  
15 Material Fact must track the movant's Statement of  
16 Uncontroverted Facts exactly as prepared. The document must  
17 be in two columns; the left hand column must restate the  
18 allegedly undisputed fact, and the right hand column must  
19 restate the moving party's evidence in support of the fact,  
20 and indicate either undisputed or disputed. The opposing  
21 party may dispute all or only a portion of the statement, but  
22 if disputing only a portion, must clearly indicate what part  
23 is being disputed. Where the opposing party is disputing the  
24 fact in whole or part, the opposing party must, in the right  
25 hand column, set forth the evidence controverting the fact.  
26 Where the opposing party is disputing the fact on the basis  
27 of an evidentiary objection, the party must cite to the  
28 evidence alleged to be objectionable and state the ground of

1 the objection and nothing more. Counsel are reminded that  
2 unwarranted factual denials made in the context of a Summary  
3 Judgment Motion are subject to Rule 11 sanctions. No  
4 argument should be set forth in this document.

5 The opposing party may submit additional material facts  
6 that bear on or relate to the issues raised by the movant,  
7 which shall follow the format described above for the moving  
8 party's Statement of Uncontroverted Facts. These additional  
9 facts shall follow the movant's facts, shall continue in  
10 sequentially numbered paragraphs (i.e., if movant's last  
11 statement of fact was set forth in paragraph 30, then the  
12 first new fact will be set forth in paragraph 31), and the  
13 evidence that supports the new fact shall be set forth in the  
14 right hand column.

15 The moving party, together with its reply, shall file a  
16 separate document entitled "Combined Statement of Facts" that  
17 (1) restates the entirety of the opposing party's Statement  
18 of Genuine Disputes of Material Fact and (2) responds to any  
19 additional facts in the same manner and format that the  
20 opposing party must follow in responding to the Statement of  
21 Uncontroverted Facts, as described above.

22 **(b) Supporting Evidence**

23 No party should submit any evidence other than the  
24 specific items of evidence or testimony necessary to support  
25 or controvert a proposed statement of undisputed fact. Thus,  
26 for example, entire sets of interrogatory responses, or  
27 documents that do not specifically support or controvert  
28 material in the Statements should not be submitted in support

1 of or in opposition to a motion for summary judgment. Any  
2 such material will not be considered.

3 Evidence submitted in support of or in opposition to a  
4 motion for summary judgment should be submitted either by way  
5 of stipulation or as exhibits to declarations sufficient to  
6 authenticate the proffered evidence, and should not be  
7 attached to the memorandum of points and authorities. The  
8 Court will accept counsel's authentication of deposition  
9 transcripts, written discovery responses, and the receipt of

10 documents in discovery if the fact that the document was in  
11 the opponent's possession is of independent significance.  
12 Documentary evidence as to which there is no stipulation  
13 regarding foundation must be accompanied by the testimony,  
14 either by declaration or properly authenticated deposition  
15 transcript, of a witness who can establish its authenticity.

16 All exhibits submitted in support of, and in opposition  
17 to, a motion for summary judgment shall be consecutively  
18 numbered; no two exhibits shall bear the same number. For  
19 example, if the moving party submits one declaration and one  
20 request for judicial notice, with four exhibits attached to  
21 each document, the exhibits attached to the declaration shall  
22 be marked 1 through 4, and the exhibits attached to the  
23 request for judicial notice shall be marked 5 through 8. The  
24 opposing party's exhibits shall then commence with number 9.  
25 Immediately above or below the page number on each page of an  
26 exhibit, the parties shall mark "[Party Name]'s Summary  
27 Judgment Exhibit No. \_\_\_\_".

28

1 In addition to the foregoing, any party who offers  
2 deposition testimony in support of or in opposition to a  
3 motion for summary judgment shall prepare and file a separate  
4 document for each deponent which contains only those  
5 questions and answers, and any objections made at the time of  
6 the deposition to those questions, that a party is relying on  
7 to support their motion, with a citation to the appropriate  
8 page and line number(s) in the deposition transcript.

9 The parties shall also deliver to chambers (but not file)  
10 one copy of the entire deposition transcript (single-sided  
11 condensed transcript including the word index) of each  
12 deposition referenced. The deposition transcripts shall be  
13 placed in a slant D-ring binder with each transcript  
14 separated by a tab divider on the right side and three-hole  
15 punched at the left margin with the oversized 13/32" hole  
16 size, not the standard 9/32" hole size. The deposition  
17 transcript binder shall include a Table of Contents and the  
18 spine of each binder shall be labeled with its contents.

19 The Court's Courtesy Copies of all evidence in support of  
20 or in opposition to a motion for summary judgment shall be  
21 submitted in a separately bound volume and shall include a  
22 Table of Contents. If the supporting evidence exceeds fifty  
23 pages, each Courtesy Copy of the supporting evidence shall be  
24 placed in a slant D-ring binder with each item of evidence  
25 separated by a tab divider on the right side. All documents  
26 contained in the binder must be three-hole punched with the  
27 oversized 13/32" hole size, not the standard 9/32" hole size.  
28 The spine of each binder shall be labeled with its contents.

1 In addition to the foregoing, the parties shall meet and  
2 confer and prepare two binders, one binder containing a joint  
3 set of all exhibits relied on by the parties in support of  
4 and in opposition to the motion for summary judgment ("Joint  
5 Exhibit Binder"), and the other binder containing a joint set  
6 of all declarations relied on by the parties in support of  
7 and in opposition to the motion for summary judgment ("Joint  
8 Declarations Binder"). The parties shall deliver to Chambers  
9 (but not file) one copy of both the Joint Exhibit Binder and  
10 Joint Declarations Binder, which shall each be marked  
11 "COURTESY COPY," in conjunction with the filing of the Reply.  
12 The Joint Exhibit Binder and Joint Declarations Binder shall  
13 include a Table of Contents, and the spine of each binder  
14 shall be labeled with its contents.

15 The Table of Contents for the Joint Exhibit Binder and  
16 Joint Declarations Binder shall specifically describe each  
17 summary judgment exhibit or declaration and include a  
18 citation to each paragraph number in the Combined Statement  
19 of Facts that refers to the exhibit or declaration (e.g.  
20 Plaintiff's Summary Judgment Exhibit No. 1 - Letter from John  
21 Doe to Jane Doe dated January 1, 2007 Re: Reasons for Jane  
22 Doe's termination) (Combined Statement of Facts Nos. 2, 8,  
23 10). In preparing the Table of Contents, counsel should not  
24 create a new set of exhibit numbers. Counsel shall use the  
25 same exhibit numbers that were used to identify the documents  
26 in the Motion for Summary Judgment.

27 / / /

28 / / /

1 (c) Objections to Evidence

2 If a party disputes a fact based in whole or in part on  
3 an evidentiary objection, the ground for the objection, as  
4 indicated above, should be stated in the Statement of Genuine  
5 Disputes of Material Fact or Combined Statement of Facts but  
6 not argued in that document. Evidentiary objections are to  
7 be addressed in a separate memorandum to be filed with the  
8 opposition or reply brief of the party. This memorandum  
9 should be organized to track the paragraph numbers of the  
10 Statement of Genuine Disputes of Material Fact or Combined  
11 Statement of Facts in sequence. It should identify the  
12 specific item of evidence to which objection is made, or in  
13 the case of deposition testimony it should quote the relevant  
14 testimony, the ground for the objection, and a very brief  
15 argument with citation to authority as to why the objection  
16 is well taken. The following is an example of the format  
17 contemplated by the Court:

18 Combined Statement of Facts Paragraph 10: Objection to  
19 the supporting deposition testimony of Jane Smith [quote  
20 testimony] at 60:1-10 on the grounds that the statement  
21 constitutes inadmissible hearsay and no exception is  
22 applicable. To the extent it is offered to prove her  
23 state of mind, it is irrelevant because her state of mind  
24 is not in issue. Fed. R. Evid. 801, 802.

25 DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE  
26 OPPONENT'S STATEMENT OF FACTS. THESE WILL BE  
27 DISREGARDED AND OVERRULED.

28 / / /

1           **(d) The Memorandum of Points and Authorities**

2           The movant's memorandum of points and authorities should  
3 be in the usual form required under Local Rules and should  
4 contain a narrative statement of facts as to those aspects of  
5 the case that are before the Court. All facts should be  
6 supported with citations to the paragraph number in the  
7 Statement of Uncontroverted Facts that supports the factual  
8 assertion and not to the underlying evidence.

9           Unless the case involves some unusual twist, the motion  
10 need only contain a brief statement of the Fed.R.Civ.P. 56  
11 standard; the Court is familiar with the Rule and with its  
12 interpretation under *Celotex* and its progeny. If at all  
13 possible, the argument should be organized to focus on the  
14 pertinent elements of the claim(s) for relief or defense(s)  
15 in issue, with the purpose of showing the existence or non-  
16 existence of a genuine issue of material fact for trial on  
17 that element of the claim or defense.

18           Likewise, the opposition memorandum of points and  
19 authorities should be in the usual form required by the Local  
20 Rules. Where the opposition memorandum sets forth facts,  
21 those facts should be supported with citations to the  
22 paragraph number in the Statement of Genuine Disputes of  
23 Material Fact and not to the underlying evidence.

24           **(e) Proposed Statement of Decision**

25           Each party shall prepare a Proposed Statement of  
26 Decision, which shall contain a statement of the relevant  
27 facts and applicable law with citations to case law and the  
28 record. The Proposed Statement of Decision shall not exceed

1 ten pages and shall be in a form that would be appropriate  
2 for the Court to enter as its final order on the motion. The  
3 Proposed Statement of Decision shall be submitted to the  
4 Court in accordance with the General Order Authorizing  
5 Electronic Filing.

6 **(f) Timing**

7 Parties should not wait until the motion cut-off date to  
8 bring motions for summary judgment or partial summary  
9 judgment. Early completion of non-expert discovery and  
10 filing of motions for summary judgment may eliminate or  
11 reduce the need for expensive expert depositions which are  
12 normally conducted in the last stages of discovery.

13 **Caveat: If a party fails to respond to a Motion for**  
14 **Summary Judgment, the Court will assume that the material**  
15 **facts as claimed and adequately supported by the moving party**  
16 **are admitted to exist without controversy, which may result**  
17 **in the granting of the Motion for Summary Judgment.**

18 **5. MOTIONS IN LIMINE**

19 The Court will only entertain a maximum of five motions  
20 in limine by a party. In the event a party believes that  
21 more than five motions in limine are necessary, the party  
22 must obtain leave of Court to file more than five motions in  
23 limine. The Court will not hear or resolve motions in limine  
24 that are disguised summary judgment motions. No application  
25 to file under seal will be granted with respect to a motion  
26 in limine or any documents submitted with the motion in  
27 limine.

28

1 Before filing any motion in limine, counsel for the  
2 parties shall confer in a good faith effort to eliminate the  
3 necessity for hearing the motion in limine or to eliminate as  
4 many of the disputes as possible. It shall be the  
5 responsibility of counsel for the moving party to arrange for  
6 this conference. The conference shall take place in person  
7 within ten calendar days of service upon opposing counsel of  
8 a letter requesting such conference, but in no event later  
9 than twenty-one days before the Pre-Trial Conference. Unless  
10 counsel agree otherwise, the conference shall take place at  
11 the office of the counsel for the moving party. If both  
12 counsel are not located in the same county in the Central  
13 District, the conference may take place by telephone. The  
14 moving party's letter shall identify the testimony, exhibits,  
15 or other specific matters alleged to be inadmissible and/or  
16 prejudicial, shall state briefly with respect to each such  
17 matter the moving party's position (and provide any legal  
18 authority which the moving party believes is dispositive),  
19 and shall specify the terms of the order to be sought.

20 If counsel are unable to resolve their differences, they  
21 shall prepare and file a separate, sequentially numbered  
22 Joint Motion in Limine for each issue in dispute which  
23 contains a clear caption which identifies the moving party  
24 and the nature of the dispute (e.g., "Plaintiff's Motion in  
25 Limine #1 to exclude the testimony of Defendant's expert").  
26 Each Joint Motion in Limine shall consist of one document  
27 signed by all counsel. The Joint Motion in Limine shall  
28 contain a clear identification of the testimony, exhibits, or

1 other specific matters alleged to be inadmissible and/or  
2 prejudicial and a statement of the specific prejudice that  
3 will be suffered by the moving party if the motion is not  
4 granted. The identification of the matters in dispute shall  
5 be followed by each party's contentions and each party's  
6 memorandum of points and authorities. The title page of the  
7 Joint Motion in Limine must state the Pre-Trial Conference  
8 date, hearing date for the motions in limine, and Trial date.

9       Joint Motions in Limine made for the purpose of  
10 precluding the mention or display of inadmissible and/or  
11 prejudicial matter in the presence of the jury shall be  
12 accompanied by a declaration that includes the following:  
13 (1) a clear identification of the specific matter alleged to  
14 be inadmissible and/or prejudicial; (2) a representation to  
15 the Court that the subject of the motion in limine has been  
16 discussed with opposing counsel, and that opposing counsel  
17 has either indicated that such matter will be mentioned or  
18 displayed in the presence of the jury before it is admitted  
19 in evidence or that counsel has refused to stipulate that  
20 such matter will not be mentioned or displayed in the  
21 presence of the jury unless and until it is admitted in  
22 evidence; and (3) a statement of the specific prejudice that  
23 will be suffered by the moving party if the motion in limine  
24 is not granted.

25       Unless ordered by the Court, no supplemental or separate  
26 memorandum of points and authorities shall be filed by either  
27 party in connection with any motion in limine.

28 / / /

1 The Court's Courtesy Copies of all evidence in support of  
2 or in opposition to a motion in limine, including  
3 declarations and exhibits to declarations, shall be submitted  
4 in a separately bound volume and shall include a Table of  
5 Contents. If the supporting evidence exceeds fifty pages,  
6 each Courtesy Copy of the supporting evidence shall be placed  
7 in a slant D-ring binder with each item of evidence separated  
8 by a tab divider on the right side, and the spine of the  
9 binder shall be labeled with its contents. All documents

10 contained in the binder must be three-hole punched with the  
11 oversized 13/32" hole size, not the standard 9/32" hole size.

12 The Court will not consider any motion in limine in the  
13 absence of a joint motion or a declaration from counsel for  
14 the moving party establishing that opposing counsel: (a)  
15 failed to confer in a timely manner; (b) failed to provide  
16 the opposing party's portion of the joint motion in a timely  
17 manner; or (c) refused to sign and return the joint motion  
18 after the opposing party's portion was added.

19 Unless otherwise ordered by the Court, motions in limine  
20 should be filed and will be heard on the dates specified on  
21 the last page of this Order. Unless the Court in its  
22 discretion otherwise allows, no motions in limine shall be  
23 filed or heard on an ex parte basis, absent a showing of  
24 irreparable injury or prejudice not attributable to the lack  
25 of diligence of the moving party.

26 The failure of any counsel to comply with or cooperate in  
27 the foregoing procedures will result in the imposition of  
28

1 sanctions, including a resolution of the issue against the  
2 party refusing to cooperate.

3 **6. PRE-TRIAL CONFERENCE AND LOCAL RULE 16 FILINGS**

4 **(a) General Provisions**

5 The Pre-Trial Conference ("PTC") will be held on the date  
6 specified on the last page of this Order, unless the Court  
7 expressly waived a PTC. If adjustments in the Court's  
8 calendar to accommodate congestion become necessary, the  
9 Court may re-schedule the PTC instead of the trial date.

10 Therefore, the parties should assume that if the PTC goes  
11 forward, the trial will go forward without continuance,  
12 although some brief period of trailing may prove necessary.

13 The lead trial attorney on behalf of each party shall  
14 attend both the PTC and all meetings of the parties in  
15 preparation for the PTC, unless excused for good cause shown  
16 in advance of the PTC.

17 A continuance of the PTC at the parties' request or by  
18 stipulation is highly unlikely. **Specifically, failure to**  
19 **complete discovery is not a ground for continuance.** In the  
20 unlikely event that the Court agrees to continue the PTC, the  
21 trial date is likely to be delayed as a result. If a change  
22 in the trial date is necessitated or likely because of the  
23 Court's calendar or otherwise, modifications of that date  
24 will be discussed at the PTC.

25 At the PTC, the parties should be prepared to discuss  
26 means of streamlining the trial, including, but not limited  
27 to: bifurcation; presentation of foundational and non-  
28 critical testimony and direct testimony by deposition

1 excerpts; narrative summaries and/or stipulations as to the  
2 content of testimony; presentation of testimony on direct  
3 examination by affidavit or by declaration subject to cross-  
4 examination; and qualification of experts by admitted  
5 resumes. The Court will also discuss settlement.

6 **(b) Form of Pre-Trial Conference Order ("PTCO")**

7 The proposed PTCO shall be filed by the date specified on  
8 the last page of this Order. Adherence to this time  
9 requirement is necessary for in-chambers preparation of the  
10 matter. The form of the proposed PTCO shall comply with  
11 Appendix A to the Local Rules and the following:

12 (i) Place in "ALL CAPS" and in **bold** the separately  
13 numbered headings for each category in the PTCO (e.g., "1.  
14 **THE PARTIES**" or "7. **CLAIMS AND DEFENSES OF THE PARTIES**").

15 (ii) Include a Table of Contents at the beginning.

16 (iii) In specifying the surviving pleadings, state  
17 which claims or counterclaims have been dismissed or  
18 abandoned (e.g., "Plaintiff's second cause of action for  
19 breach of fiduciary duty has been dismissed."). Also, in  
20 multiple party cases where not all claims or counterclaims  
21 will be prosecuted against all remaining parties on the other  
22 side, specify to which party each claim or counterclaim  
23 is directed.

24 (iv) In drafting the PTCO, the Court expects that  
25 the parties will attempt to agree on and set forth as many  
26 uncontested facts as possible. A carefully drafted and  
27 comprehensively stated stipulation of facts will assist the  
28 Court in preparing for the Pre-Trial Conference.

1           (v) In specifying the parties' claims and defenses  
2 in Section 7 of the PTCO, each party shall closely follow the  
3 examples set forth in Appendix A of the Local Rules.

4           (vi) The Court may submit fact issues to the jury in  
5 the form of findings on a special verdict form. The issues  
6 of fact should track the elements of a claim or defense on  
7 which the jury will be required to make findings.

8           (vii) If expert witnesses are to be called at trial,  
9 each party must list and identify its respective expert  
10 witnesses, both retained and non-retained. Failure of a  
11 party to list and identify an expert witness in the PTCO  
12 shall preclude the party from calling that expert witness at  
13 trial.

14           **(c) Rule 16 Filings; Memoranda; Witness Lists; Exhibit**  
15           **Lists**

16           The parties must comply fully with the requirements of  
17 Local Rule 16. They shall file carefully prepared Memoranda  
18 of Contentions of Fact and Law (which may also serve as the  
19 trial brief), along with their respective Witness Lists and  
20 Exhibit Lists, all in accordance with the Local Rules. See  
21 the last page of this Order for applicable dates.

22           **(d) Summary of Witness Testimony and Time Estimates**

23           Counsel shall prepare a list of their witnesses,  
24 including a brief summary (two to three paragraphs) of each  
25 witness's expected testimony, an estimate of the length of  
26 time needed for direct examination, and whether the witness  
27 will testify by deposition or in person. Counsel shall  
28 exchange these lists with opposing counsel. **Counsel shall**

1 jointly file a single list of witness testimony summaries,  
2 including estimates for direct examination of their own  
3 witnesses and estimates for cross-examination of opposing  
4 witnesses. The joint witness testimony summaries shall be  
5 filed at the same time counsel submit the PTCO. If a party  
6 intends to offer deposition testimony into evidence at trial,  
7 the party shall comply with the Local Rules.

8 **(e) Pre-Trial Exhibit Stipulation**

9 The parties shall prepare a Pre-Trial Exhibit Stipulation  
10 which shall contain each party's numbered list of all trial  
11 exhibits, with objections, if any, to each exhibit including  
12 the basis of the objection and the offering party's response.  
13 All exhibits to which there is no objection shall be deemed  
14 admitted. The parties shall also identify each witness they  
15 anticipate will testify about and/or lay the foundation for  
16 the exhibit. All parties shall stipulate to the authenticity  
17 of exhibits whenever possible, and the Pre-Trial Exhibit  
18 Stipulation shall identify any exhibits for which  
19 authenticity has not been stipulated to and the specific  
20 reasons for the party's failure to stipulate.

21 The Stipulation shall be substantially in the following  
22 form:

23 / / /

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

Pre-Trial Exhibit StipulationPlaintiff(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Witness</u>	<u>If Objection, State Grounds</u>	<u>Response to Objection</u>
---------------	--------------------	----------------	------------------------------------	------------------------------

Defendant(s)' Exhibits

<u>Number</u>	<u>Description</u>	<u>Witness</u>	<u>If Objection, State Grounds</u>	<u>Response to Objection</u>
---------------	--------------------	----------------	------------------------------------	------------------------------

The Pre-Trial Exhibit Stipulation shall be filed at the same time counsel file the PTCO. Failure to comply with this paragraph shall constitute a waiver of all objections.

**DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE OPPOSING PARTY'S EXHIBITS. THESE WILL BE DISREGARDED AND OVERRULED.**

**(f) Jury Instructions, Verdict Forms, Special Interrogatories**

Fourteen days before the required Local Rule 16-2 meeting, the parties shall exchange proposed jury instructions, verdict forms, and, if necessary, special interrogatories. Seven days before the meeting, counsel shall exchange written objections, if any, to the proposed jury instructions, verdict forms, and special interrogatories. At the required meeting, lead counsel shall confer with the objective of submitting one set of agreed upon instructions, a verdict form, and, if necessary, special interrogatories.

If lead counsel agree upon one complete set of jury instructions, they shall file a joint set of proposed jury instructions, arranged in a logical sequence with each instruction sequentially numbered, and identified as "Stipulated Instruction No. \_\_\_\_ Re \_\_\_\_\_," with the blanks

1 filled in as appropriate. If the parties cannot agree upon  
2 one complete set of jury instructions, they shall file the  
3 following two joint documents with the Court:

4 (i) A joint set of proposed jury instructions  
5 arranged in a logical sequence with each instruction  
6 sequentially numbered. If undisputed, an instruction shall  
7 be identified as "Stipulated Instruction No. \_\_\_ Re \_\_\_\_\_,"  
8 with the blanks filled in as appropriate. If disputed, each  
9 alternate version of the disputed instruction shall be  
10 inserted together (back to back) in their logical place in  
11 the overall sequence. Each such disputed instruction shall  
12 be identified as "Disputed Instruction No. \_\_\_ Re \_\_\_\_\_  
13 Proposed By \_\_\_\_\_," with the blanks filled in as  
14 appropriate. All disputed versions of an instruction shall  
15 bear the same instruction number. If a party does not have a  
16 counter-version of an instruction and simply contends no such  
17 instruction should be given, then that party should so state  
18 (and explain why) on a separate page inserted in lieu of an  
19 alternate version; and

20 (ii) A joint memorandum of law in support of each  
21 party's disputed instructions, organized by instruction  
22 number. The joint memorandum of law shall quote the text of  
23 each disputed instruction and shall set forth each party's  
24 respective position and legal authority, immediately after  
25 the text of each disputed instruction.

26 Each proposed instruction, whether agreed upon or  
27 disputed, shall (a) be set forth in full on a separate page;  
28 (b) embrace only one subject or principle of law; (c) cite to

1 the legal authority for or source of the instruction; and (d)  
2 reference the claim for relief to which the instruction  
3 relates with a citation to Section 7 of the PTCO.

4 **A Table of Contents shall be included with all jury**  
5 **instructions submitted to the Court.** The Table of Contents  
6 shall set forth the following:

- 7 (i) The number of the instruction;  
8 (ii) A brief title of the instruction;  
9 (iii) Whether it is undisputed or disputed;  
10 (iv) The source of the instruction; and  
11 (v) The page number of the instruction.

12 For example:

13	<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page No.</u>
14				
15	1	Burden of Proof	9th Cir. Man.	5
16		(Undisputed)	of Model Jury	
			Instr. 5.1	

17 The Court directs counsel to use the instructions from  
18 the Ninth Circuit Manual of Model Jury Instructions (West  
19 Publishing, most recent edition) where applicable. Where  
20 California law is to be applied and the above instructions  
21 are not applicable, the Court prefers counsel to use the  
22 Judicial Council of California Civil Jury Instructions  
23 ("CACI") (LexisNexis Matthew Bender, most recent edition).  
24 If neither of these sources is applicable, counsel are  
25 directed to use the instructions from O'Malley, Grenig and  
26 Lee, Federal Jury Practice and Instructions (West Group, most  
27 recent edition). Any modifications made to the original form  
28 instruction from the foregoing sources (or any other form

1 instructions) must be specifically identified, along with the  
2 authority supporting the modification. **Counsel shall not**  
3 **submit proposed preliminary instructions to be given to the**  
4 **jury prior to opening statements.**

5 If the parties agree upon a verdict form and/or special  
6 interrogatories, they shall file a joint verdict form and/or  
7 special interrogatories, with the questions arranged in a  
8 logical sequence. If the parties cannot agree upon a verdict  
9 form and/or special interrogatories, they shall file a joint  
10 document containing each party's alternative version along  
11 with a brief explanation of each party's respective position.

12 The joint set of proposed jury instructions, the joint  
13 memorandum of law, and verdict form(s) and/or special  
14 interrogatories are to be filed with the PTCO and other Local  
15 Rule 16 documents. Courtesy Copies shall be provided to the  
16 Court in accordance with Section 1 of this Order. In  
17 addition, the parties shall e-mail the joint set of proposed  
18 jury instructions, joint memorandum of law, and verdict  
19 form(s) and/or special interrogatories in WordPerfect or Word  
20 format to the Chambers' e-mail address  
21 ([JFW\\_Chambers@cacd.uscourts.gov](mailto:JFW_Chambers@cacd.uscourts.gov)) at the time of filing.

22 Immediately after the Court's final ruling on the  
23 disputed jury instructions, counsel shall file one final  
24 "clean set" of jury instructions, which shall be sent into  
25 the jury room for the jury's use during deliberations. The  
26 "clean set" shall contain only the text of each instruction  
27 set forth in full on each page, with the caption "Court's  
28 Instruction No. \_\_\_\_" (eliminating supporting authority,

1 citations to the PTCO, etc.)). Counsel shall also e-mail the  
2 final "clean set" of jury instructions in WordPerfect or Word  
3 format to the Chambers' e-mail address  
4 (JFW\_Chambers@cacd.uscourts.gov) at the time of filing.

5 **Caveat:** The failure of any counsel to comply with or  
6 cooperate in all of the foregoing procedures regarding jury  
7 instructions and/or verdict forms will constitute a waiver of  
8 all objections to the jury instructions and/or verdict form  
9 used by the Court.

10 **(g) Real-Time Reporting Requirement**

11 Each party must file with the Court, at the same time  
12 counsel submit the PTCO, a document for the Court Reporter  
13 which contains proper names, unusual or scientific terms, or  
14 any foreign or uncommon words that are likely to be used by  
15 the parties during the PTC and the Trial. Each party shall  
16 also e-mail a copy of the document to the Chambers' e-mail  
17 address (JFW\_Chambers@cacd.uscourts.gov) at the time of  
18 filing.

19 **(h) Joint Statement of the Case and Requests for Voir**  
20 **Dire**

21 At the Pre-Trial Conference, the parties shall file their  
22 proposed voir dire questions and their joint statement of the  
23 case which the Court shall read to all prospective jurors  
24 prior to the commencement of voir dire. The statement should  
25 be not longer than two or three paragraphs.

26 The Court conducts voir dire of all prospective jurors.  
27 The parties need not submit requests for standard voir dire  
28 questions, such as education, current occupation, marital

1 status, prior jury service, etc., but should include only  
2 proposed questions specifically tailored to the parties and  
3 issues of the case.

4 **7. COURT TRIALS**

5 **(a) Declarations of Witness Direct Testimony**

6 Counsel in non-jury trials shall submit the direct  
7 testimony of their witnesses in writing in a declaration  
8 executed under penalty of perjury. These declarations shall  
9 be in admissible form with an appropriate foundation  
10 established for the declarant's statements. Paragraphs in  
11 each declaration shall be numbered consecutively to  
12 facilitate the identification of paragraphs for evidentiary  
13 objections. Any exhibits which are attached to a witness  
14 declaration shall be numbered consistently with the number of  
15 the exhibit on the Joint Exhibit List.

16 Counsel are to exchange and file these declarations at  
17 least twelve calendar days before trial, unless otherwise  
18 ordered by the Court. Courtesy Copies shall be provided to  
19 the Court in accordance with Section 1 of this Order.  
20 Courtesy Copies shall be submitted to the Court in a slant D-  
21 ring binder with each declaration separated by a tab divider  
22 on the right side. All documents must be three-hole punched  
23 with the oversized 13/32" hole size, not the standard 9/32"  
24 hole size. The binders shall also contain a Table of  
25 Contents listing the declarations contained therein, and the  
26 spine of the binder shall be labeled with its contents.

27 Eight calendar days before trial, counsel may file  
28 evidentiary objections to those declarations. Counsel shall

1 prepare a separate document for each declaration for which  
2 they have an evidentiary objection in which they shall quote  
3 the specific language from the declaration to which they  
4 object, followed by the objection and any relevant argument.  
5 Counsel shall file any reply or response to the objections by  
6 noon on the fifth calendar day before trial. Courtesy Copies  
7 shall be provided to the Court in accordance with Section 1  
8 of this Order. **DO NOT SUBMIT BLANKET OR BOILERPLATE**  
9 **OBJECTIONS TO THE OPPOSING PARTY'S WITNESS DECLARATIONS.**  
10 **THESE WILL BE DISREGARDED AND OVERRULED.**

11 At trial, the Court will rule on the evidentiary  
12 objections and, depending upon the ruling, the declarations  
13 will be received in evidence, either in whole or in part, or  
14 rejected. Counsel will then conduct the cross-examination  
15 and re-direct examination at trial.

16 Failure to comply with the terms of this Order will  
17 result in sanctions or the Court may refuse to allow that  
18 witness to testify.

19 **(b) Trial Briefs**

20 Counsel for each party shall file and serve a trial  
21 brief, not to exceed 15 pages in length, fourteen calendar  
22 days before trial.

23 **(c) Findings of Fact and Conclusions of Law**

24 Counsel for each party shall file and serve initial  
25 proposed findings of fact and conclusions of law fourteen  
26 calendar days before trial. Counsel for each party shall  
27 also e-mail a copy of their proposed findings of fact and  
28 conclusions of law to the Chambers' e-mail address

1 (JFW\_Chambers@cacd.uscourts.gov) on the date due. Counsel  
2 for each party shall then:

- 3 (i) Underline in red the portions which it  
4 disputes;  
5 (ii) Underline in blue the portions which it  
6 admits; and  
7 (iii) Underline in yellow the portions which it does  
8 not dispute, but deems irrelevant.

9 Counsel may agree with a part of a finding or conclusion,  
10 disagree with a part of it, and/or consider a part of it  
11 irrelevant.

12 Two marked copies of opposing counsel's proposed findings  
13 of fact and conclusions of law shall be filed with the Court  
14 seven calendar days before trial and one marked copy shall be  
15 served on opposing counsel. Courtesy Copies shall be  
16 provided to the Court in accordance with Section 1 of this  
17 Order.

18 **8. SETTLEMENT**

19 This Court will not conduct settlement conferences in  
20 non-jury cases which the Court will try unless counsel for  
21 all parties and their respective clients agree either in  
22 writing or on the record. In jury cases, the Court will  
23 conduct a settlement conference at the parties' joint request  
24 if three conditions exist:

25 (a) The parties are satisfied that the fact issues in  
26 the case will be tried to a jury;

27 (b) All significant pre-trial rulings which the Court  
28 must make have been made; and


1 (c) The parties desire the Court to conduct the  
2 conference, understanding that if settlement fails, the Court  
3 will preside over trial of the case.

4 The parties must file a Status Report re: Settlement at  
5 the time they lodge the Proposed Pre-Trial Conference Order.  
6 The Status Report shall include the name and phone number of  
7 the Settlement Officer who assisted the parties with their  
8 settlement conference.

9 Caveat: If counsel fail to cooperate in the preparation  
10 of the required Pre-Trial documents, fail to file the  
11 required Pre-Trial documents, or fail to appear at the Pre-  
12 Trial Conference and such failure is not otherwise  
13 satisfactorily explained to the Court: (a) the cause shall  
14 stand dismissed for failure to prosecute if such failure  
15 occurs on the part of the plaintiff; (b) default judgment  
16 shall be entered if such failure occurs on the part of the  
17 defendant; or (c) the Court may take such action as it deems  
18 appropriate.

19 IT IS SO ORDERED.

20 DATED: November 22, 2013

21   
22 JOHN F. WALTER  
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28

**JUDGE JOHN F. WALTER**  
**SCHEDULE OF TRIAL AND PRE-TRIAL DATES**

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (jury) Estimated length: <u>3</u> days	8:30 am				7/29/14
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	10:00 am				7/18/14
[Court trial] Hearing on Motions in Limine	10:00 am				X
Pre-Trial Conference; File Proposed Voir Dire Qs and Agreed-to Statement of Case	10:00 am				7/11/14
Submit Pre-Trial Conf. Order; File Motions in Limine; Memo of Contentions of Fact and Law; Pre-Trial Exhibit Stipulation; Summary of Witness Testimony and Time Estimates; File Status Report re: Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.					7/2/14
Last day for hearing motions *	1:30 pm				6/23/14
Discovery cut-off					6/9/14

**ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING CONFERENCE**

Last day to conduct Settlement Conference					4/1/14
Last day to file Joint Report re: results of Settlement Conference					4/8/14

\* Motions for class certification shall be filed in accordance with Local Rule 23-3.